



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 3

RIN 2900-A082

Burial Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to clarify, reorganize, and rewrite in plain language its regulations that govern entitlement to monetary burial benefits, which include burial allowances for service-connected and non-service-connected deaths, a plot or interment allowance, and reimbursement of transportation expenses. The amendments would also establish rules to support VA's automated payment of burial allowances to surviving spouses, conversion to flat-rate burial and plot or interment allowances that are equal to the maximum benefit authorized by law, and priority of payment to non-spouse survivors.

DATES: VA must receive comments on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through <http://www.regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should

indicate that they are submitted in response to “RIN 2900-A082, Burial Benefits.”

Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. This is not a toll-free number. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Rob Watkins, Pension and Fiduciary Service (21PF), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (202) 632-8863. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. chapter 23, VA has authority to pay benefits to certain deceased veterans’ survivors and other persons for the veterans’ burials and funerals, to include a burial allowance for non-service-connected deaths (38 U.S.C. 2302, 2303(a)) or a burial allowance for service-connected deaths (38 U.S.C. 2307). Congress also authorized VA to pay a plot or interment allowance for veterans who are eligible for burial in a national cemetery and who are not buried in such a cemetery (38 U.S.C. 2303(b)). Finally, Congress authorized VA to reimburse the cost of transportation of certain deceased veterans to the place of burial (38 U.S.C. 2303(a), 2308).

VA implemented its authority under chapter 23 in subpart B of 38 CFR part 3,

specifically §§ 3.1600 through 3.1612. However, these regulations are poorly organized and difficult to understand.

The current rules are also flawed to the extent that they do not account for the current cost of a burial or funeral and inhibit VA's ability to automate the payment of burial benefits to certain beneficiaries. In a proposed rule published in the Federal Register on April 8, 2008 (73 FR 19,021), VA proposed to reorganize and rewrite in plain language provisions applicable to burial benefits. This proposed rule would build upon that earlier proposed rule. We propose to remove the current regulations and replace them with new §§ 3.1700 through 3.1713, which are written and organized for clarity and ease of use and are based, in part, upon the earlier proposed provisions. In addition, as described in detail below, we also propose to improve VA's delivery of these benefits by, among other things, automatically paying surviving spouses certain burial benefits when eligibility for those benefits can be determined from evidence of record, paying flat-rate burial and plot or interment allowances, and establishing a priority of payment for deceased veterans' survivors. We intend that these changes will allow VA to automate payment of a burial allowance to most surviving spouses and expedite the adjudication of all other burial benefits claims.

Background

VA and its predecessor agencies have a long history of paying monetary benefits for deceased veterans' burial and funeral expenses. In 1917, Public Law 65-90 authorized a maximum payment of \$100 for a deceased servicemember's burial expenses and transportation of the remains to the servicemember's home. In 1924,

Public Law 68-242 extended those benefits to certain veterans, but did not change the maximum benefit amount. Congress amended the law several times in subsequent years to add new entitlements and to increase the maximum benefit amount that VA may pay. However, the maximum burial allowance for non-service-connected death (“non-service-connected burial allowance”), currently \$300, has not changed since the 1978 enactment of Public Law 95-479, the Veterans’ Disability Compensation and Survivors’ Benefits Act of 1978. While Congress increased the maximum burial allowance for service-connected death (“service-connected burial allowance”) in 1978 (\$1,100), 1988 (\$1,500), and 2001 (\$2,000), there has been no recent increase, and with only a few exceptions (see 38 U.S.C. 2303) these benefits are not indexed to inflation. Currently, in almost all burial benefits claims, VA pays the maximum benefit authorized by law.

In a 2009 report, a congressional committee cited the National Funeral Directors Association’s (NFDA) 2006 estimate for the average cost of a funeral (\$7,323) and expressed concern that inflation had eroded the purchasing power of VA’s burial benefits. See S. Rep. No. 111-71, at 28-29. In response to this concern, Congress enacted section 501 of the Veterans’ Benefits Act of 2010 (Public Law 111-275), which increased (from \$300 to \$700) the burial allowance under section 2303(a) for a veteran who died while hospitalized by VA and the plot or interment allowance under section 2303(b). The law also added section 2303(c) to index the allowances paid under that section to inflation and “preserve the purchasing power of the benefit[s].” See S. Rep. No. 111-71 at 29.

In 2007 and 2008, VA's Office of Policy and Planning (OPP) conducted a study to determine whether VA's burial program was achieving expected outcomes and to determine the program's impact on veterans and families. See Evaluation of the VA Burial Benefits Program: Final Report, available at http://www.va.gov/op3/docs/ProgramEvaluations/Final_Burial_Report_8-26-08.pdf. OPP found that funeral costs had increased at a greater pace than the cost of other services since 1990. OPP noted that in 1973, the service-connected burial allowance covered 72 percent of a veteran's funeral and burial expenses, and the non-service-connected allowance covered only 22 percent of a veteran's funeral and burial expenses. The plot allowance covered only 54 percent of the cost of a deceased veteran's burial plot. According to OPP, by 2007, the value of these benefits had decreased significantly, and the service-connected burial allowance reimbursed only 23 percent of the cost of a veteran's burial, the non-service-connected burial allowance reimbursed only 4 percent of the cost of a veteran's burial, and the plot or interment allowance reimbursed only 14 percent of the cost of a plot.

The NFDA reports on its website, www.nfda.org, that the median cost of a funeral and burial was \$7,045 in 2012. The reported cost did not include the cost of a vault or cemetery or other miscellaneous cash advance charges, such as charges for flowers or obituaries. Further, NFDA reports that the median cost for an adult burial and funeral in the United States had increased from \$708 in 1960 to \$7,045 in 2012. With one exception for plot or interment allowances paid to States, VA currently administers all monetary burial benefits on a reimbursement basis. In section 2302 regarding the non-service-connected burial allowance, Congress prescribed, "the Secretary [of Veterans

Affairs], in the Secretary's discretion, having due regard to the circumstances in each case, may pay a sum not exceeding \$300 to such person as the Secretary prescribes to cover the burial and funeral expenses." In section 2303(a)(1)(A) regarding deaths in a VA facility, Congress authorized VA to "pay the actual cost (not to exceed \$700 . . .) of the burial and funeral." In section 2307 regarding the service-connected burial allowance, Congress prescribed, "the Secretary, upon the request of the survivors of such veteran, shall pay the burial and funeral expenses incurred in connection with the death of the veteran in an amount not exceeding . . . \$2,000." Finally, in section 2303(b) regarding the plot allowance, Congress prescribed, "the Secretary shall pay a sum not exceeding \$700 . . . as a plot or interment allowance."

VA originally created a reimbursement-based benefits system to implement these statutes. The reimbursement system that VA implemented in its current burial regulations is burdensome for claimants and difficult for VA to administer. Further, this system does not best reflect what Congress intended. Legislative history demonstrates that Congress intended for payment of burial benefits to be uncomplicated and to draw on information within VA's control. For example, in passing the Omnibus Budget Reconciliation Act of 1981 (Public Law 97–35), Congress simplified the non-service-connected burial allowance criteria by linking eligibility to a veteran's entitlement to receive compensation or pension. Acknowledging increased burial benefits claims because of climbing death rates among World War II veterans, Congress' clear motivation was to make burial benefits "easier to administer, i.e., through existing VA compensation and pension rolls." See S. Rep. No. 139, 97th 1st Sess. 1981 at 999; see

also S. Rep. No. 71, 111th Cong., 1st Sess. 2009 at 28. We believe that automation of burial benefit payments and payment at a flat rate wherever possible based on data that VA maintains in its compensation and pension rolls is consistent with congressional intent in this regard.

Under current regulations, after VA determines basic eligibility for burial, e.g., whether the veteran had qualifying service and was in receipt of disability compensation or pension, survivors or other persons who incurred burial expenses must submit statements and proof of payment to establish entitlement. This procedure complicates VA's adjudication of burial claims and payment of benefits. As a result, the claimant, or in some cases the service provider, has the burden of carrying the full cost of the funeral and burial pending VA's reimbursement. Moreover, the reimbursement process is inefficient because it requires the careful review of a claimant's actual expenses and a precise calculation of burial costs for small, one-time benefit payments, when the average cost of a burial almost always exceeds by far the statutory maximum rate that VA is authorized to pay. The reimbursement system also impedes VA's efforts to automate payment of burial benefits based on information in VA systems on the date of a veteran's death. We estimate that VA could automatically provide a burial allowance to approximately 62,000 surviving spouses annually based on information in VA systems, if we simply paid the maximum burial allowance authorized by Congress.

Accordingly, we propose to amend VA's burial regulations to authorize the payment of flat-rate service-connected and non-service-connected burial allowances and the plot or interment allowance at the statutory maximum amount. VA has determined that it is not administratively efficient to adjudicate each burial benefit claim

on a reimbursement basis when it is clear that the average cost of a burial far exceeds the maximum benefit authorized by Congress.

As of the end of April 2013, VA took an average of over 180 days to process a claim for burial benefits. The proposed rules would enable VA to process and pay an estimated 62,000 surviving spouses automatically, i.e., without application, in conjunction with the veteran's month-of-death benefit payment. This would relieve those survivors of the need to cover the veteran's funeral and burial expenses up front and wait for VA to provide reimbursement. Additionally, the automation of payments, revised priority of claimants, and simplified adjudication process included in these proposed rules will result in significant savings of administrative resources. As a result, VA could divert those resources away from adjudicating these small, one-time benefits, and expedite the adjudication of all other benefits claims.

3.1700 Types of VA burial benefits.

Current regulations do not provide any introductory description of the types of burial benefits that VA has authority to pay. Proposed § 3.1700 would add clarity to the regulations by providing an up-front explanation of VA burial benefits by benefit type. Proposed paragraph (a) would list burial benefits that are "allowances" or one-time monetary payments.

While current burial regulations use the terms "burial expenses" and "funeral expenses" inconsistently, proposed paragraph (b) would clarify and liberalize VA's definition of "burial." Under the proposed rule, the definition would be placed at the beginning of the subpart and expanded to ensure that readers know that VA pays burial

benefits for all legal methods of disposing of a veteran's remains, including cremation, burial at sea, and medical school donation.

Proposed paragraph (c) would provide references to VA regulations governing benefits for memorialization or interment of deceased veterans and certain survivors. We included the phrase "or interment" after "memorialization" to clarify the distinction between interment and memorialization. "Interment" refers to the burial of casketed remains in the ground or the placement or scattering of cremated remains. "Memorialization" means any action taken to honor the memory of a deceased individual. 38 CFR 38.600.

3.1701 Deceased veterans for whom VA may provide burial benefits.

Under the definition in 38 U.S.C. 101(2), a "veteran" is a person who served in "the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." Under section 2302, VA has authority to pay for certain burial expenses if the veteran was in receipt of compensation or pension benefits at the time of death, and for certain expenses for veterans of "any war" or veterans released from active service "for a disability incurred or aggravated in line of duty . . . and with respect to whom the Secretary determines—(A) that there is no next of kin or other person claiming the body of the deceased veteran, and (B) that there are not available sufficient resources to cover burial and funeral expenses." As discussed below in this preamble, section 104 of Public Law 112-260, effective January 10, 2014, will amend section 2302(a)(2) by removing the wartime service and disability requirements for payment of the burial allowance for the unclaimed remains of veterans.

The introductory text in current 38 CFR 3.1600 defines the term “veteran” for burial benefit purposes as including a person who died during a period deemed to be active service under current 38 CFR 3.6(b)(6) that was terminated by a discharge or release under conditions that are other than dishonorable. VA further addressed the applicable service requirements in current 38 CFR 3.1600(b)(3), 3.1600(e), and 3.1601(a). We determined that these provisions could be clearer if VA addressed the service requirements for burial benefits in one place.

Proposed § 3.1701 would describe the basic eligibility criteria for payment of burial benefits for a deceased veteran. It would clarify that a veteran must be deceased, and that burial benefits for that veteran must be authorized by a specific provision of law.

Proposed § 3.1701 would also extend the definition of veteran to persons who died shortly after discharge or release from active service under 38 U.S.C. 106(c) as currently implemented by VA in § 3.6(b)(7).

An example of a “specific provision of law” would be 46 U.S.C. 11201(a), which prescribes burial allowance eligibility for Merchant Mariners who served between August 16, 1945, and December 31, 1946, and who meet the requirements of 46 U.S.C. 11201 through 11204, and are thus deemed to have served on active duty in the Armed Forces. Given this definition of “veteran,” we have determined that it would be unnecessary to include the provisions in current 38 CFR 3.1600(e) regarding categories of individuals who are not eligible for burial benefits in this proposed rule. Further, there are generally applicable provisions in title 38 of the CFR that prescribe the requirements for veteran status. There is no need to restate those provisions in proposed § 3.1701.

3.1702 Persons who may receive burial benefits; priority of payments.

Apart from claims submitted by a State, or by an agency or political subdivision of a State, for the plot or interment allowance in section 2303(b)(1), the burial laws in chapter 23 do not specify who may receive burial benefits. See 38 U.S.C. 2302 (providing that VA “may pay a sum not exceeding \$300 to such person as the Secretary prescribes”); see also 38 U.S.C. 2307 (providing that VA “shall pay the burial and funeral expenses incurred” “upon the request of the survivors” without specifying which survivors VA shall pay). The law provides VA with discretion to prescribe who may be properly paid burial benefits.

Current §§ 3.1601 and 3.1602 prescribe who may sign a claim for the burial allowance and who may sign a claim for the plot or interment allowance; establish a priority of payment; and provide that, in some cases, VA will distribute burial benefits among payees. The current claimant-payment framework authorizes funeral directors to sign claims and prioritizes payment to funeral directors and other service providers before survivors. This system does not best reflect legislative intent and conflicts with VA’s plan to automate and prioritize payment of burial benefits to surviving spouses. We therefore propose significant changes to VA’s burial benefit claimant and payment regulations consistent with our authority to pay burial benefits. Significantly, we propose to establish a payment structure that authorizes VA to automatically pay surviving spouses when eligibility for burial benefits can be determined from the evidence of record.

Proposed § 3.1702(a) would describe in plain language VA’s revised payment policy. VA would automatically pay the burial allowance to an eligible surviving spouse,

regardless of a claim for that same benefit by other claimants, in conjunction with its payment of the month-of-death benefit prescribed in 38 CFR 3.20 and without the need for an application from the surviving spouse. As we describe in greater detail in the supplementary information on proposed § 3.1703 regarding claims for burial benefits, for purposes of these automated payments, the application would be the veteran's compensation or pension application and designation of a dependent spouse during the veteran's lifetime. VA would rely on the dependency information in its systems at the time of the veteran's death. At this time, VA does not have data to support automatic payments of burial benefits other than the burial allowance, but might automatically pay surviving spouses other VA burial benefits in the future when VA can determine eligibility for those benefits from the evidence of record.

Proposed § 3.1702(a) would establish priority for an eligible surviving spouse of record over all other potential claimants for burial benefits (except for the plot or interment allowance under 38 U.S.C. 2303(b)(1), which is payable only to a State, agency, or political subdivision). The rule would clarify that a surviving spouse who receives an automatic payment under paragraph (a) may later seek additional burial benefits, e.g., the plot or interment allowance, reimbursement of transportation expenses, and the service-connected burial allowance where the non-service-connected burial allowance was automatically paid but the surviving spouse is eligible for the higher service-connected rate, by filing a claim for those benefits on the form prescribed by VA.

Proposed § 3.1702(b) would establish a priority for VA's payment of burial benefits, excluding those automatically paid under proposed paragraph (a) and State

claims for a plot or interment allowance under proposed §§ 3.1707 and 3.1708. Under the proposed rule, VA would pay, in order of precedence, a surviving spouse, child, or parent of the deceased veteran. If there is no surviving spouse, child, or parent to receive payment, VA would pay burial benefits to the executor or administrator of the deceased veteran's estate. Where there is no executor or administrator, VA would pay burial benefits based on a claim by a person acting on behalf of the deceased veteran's estate. VA would no longer prioritize payment to funeral directors or other service providers, but would pay survivors first with the expectation that survivors, particularly surviving spouses, would receive payments more quickly and thus be able to more expeditiously pay funeral directors and other service providers. The proposed rule would reinforce VA's proposed policy to pay a surviving spouse or family member first, and clarifies that VA will not divide or apportion payment of burial benefits among multiple claimants.

3.1703 Claims for burial benefits.

Under 38 U.S.C. 2304, "[a]pplications for payments under section 2302 . . . must be filed within 2 years after the burial of the veteran." Section 2302 authorizes VA to pay the non-service-connected burial allowance. Notwithstanding that there are no other statutory limitations on the filing of claims for burial benefits, the first sentence of current § 3.1601(a) applies a 2-year time limit to "[c]laims for reimbursement or direct payment of burial and funeral expenses under § 3.1600(b) (the non-service-connected burial allowance) and plot or interment allowance under § 3.1600(f)." The plot or interment allowance is authorized by 38 U.S.C. 2303(b), and therefore the statutory

2-year time limit does not apply to the plot or interment allowance. In proposed § 3.1703(a), we would clarify that the 2-year statutory time limitation applies only to claims for the non-service-connected burial allowance. Proposed § 3.1703(a)(2) specifies that claims for the non-service-connected burial allowance based on a corrected character of discharge must be filed no later than 2 years from the date that the discharge was corrected. The proposed rule would also clarify that no other time limitations apply to claims for burial benefits.

Proposed § 3.1703(b) would describe the evidence that is needed to substantiate a claim for burial benefits. Under 38 U.S.C. 5101(a) and 5107(a), claimants must file a claim with VA and provide evidence supporting such a claim. Current § 3.1601(b) implements sections 5101(a) and 5107(a) by requiring all claimants to file a claim for any burial benefit. As described above in the supplementary information on proposed § 3.1702, to facilitate automated payment of burial benefits VA would clarify in proposed § 3.1703(b)(1) that a surviving spouse is not required to file a separate claim for the burial benefits for which automatic payment is prescribed in proposed § 3.1702(a). For all other burial benefit claims, i.e., those not automatically paid under proposed § 3.1702(a), VA would still require claimants seeking burial benefits to file a claim on the prescribed VA form.

Under current law, e.g., 38 U.S.C. 2303(a)(1), VA generally reimburses claimants seeking burial benefits up to a statutory maximum amount. VA implemented this reimbursement framework in current § 3.1601(b)(1), which requires claimants to provide a "[s]tatement of account" showing the "name of the deceased veteran, the plot or interment costs, and the nature and cost of services rendered, and unpaid balance." As

previously explained, VA proposes to pay to eligible claimants the maximum benefit specified in sections 2302 (non-service-connected burial allowance), 2303(b)(2) (plot or interment allowance), and 2307 (service-connected burial allowance). Because VA would pay the maximum statutory benefit based solely on eligibility and a statement that burial expenses were incurred by a claimant who did not receive an automated payment, such claimants would no longer be required to provide a receipt or itemized bill to establish entitlement for these benefits. Based on the average cost of funeral and burial, estimated to exceed \$7,045 as described above, and agency experience that in the vast majority of cases VA already pays the maximum benefit permitted by law, it is reasonable for VA to establish a rule whereby VA will pay automatically the statutory maximum benefit based on a presumption that the expenses incurred were at least equal to the statutory maximum, unless VA has evidence to the contrary on the date it receives notice of the veteran's death.

Section 2307 directs VA to pay a service-connected burial allowance "upon the request" of a veteran's survivors. No other burial statute includes specific language regarding a claim being required before benefits are paid. However, more generally, 38 U.S.C. 5101(a)(1) requires that a "specific claim in the form prescribed by the Secretary . . . must be filed in order for benefits to be paid or furnished to any individual under the laws administered by the Secretary." VA proposes to pay the service-connected and non-service-connected burial allowances automatically to a surviving spouse where VA has the necessary information in its compensation and pension records at the date of the veteran's death. For purposes of these payments, VA will consider the veteran's application for disability compensation or pension, and

the veteran's designation of a dependent spouse during the veteran's lifetime, as the surviving spouse's "request" for burial benefits under section 2307. By designating a spouse during his or her lifetime, a veteran can be considered to have indicated a desire for the spouse to receive the benefits to which he or she may become entitled incidental to the veteran's death. Coupled with the notification of death, which is typically provided by or on behalf of a surviving family member, VA will consider the claim requirements of 38 U.S.C. 5101(a)(1) met for purposes of paying a surviving spouse burial benefits when a veteran dies with a surviving spouse of record. This is a policy decision based on the specific nature of burial benefits which are relatively small, one-time payments. As discussed above, we estimate that these changes would enable VA to pay approximately 62,000 surviving spouses an automated burial benefit payment soon after the veteran's death and in conjunction with the month-of-death payment.

Whereas sections 2302, 2303(b), and 2307 provide the Secretary discretion to pay a flat-rate "sum" or "amount" for burial benefits, sections 2303(a) and 2308 do not. Section 2303(a) expressly limits VA payment of benefits to the "actual cost" incurred by the claimant. Because of this statutory restriction, VA cannot pay flat rate burial benefits for a veteran who dies in a VA facility. In order to pay the section 2303(a) benefit, VA will require evidence of the actual cost incurred and continue to pay the burial allowance for this particular benefit on a reimbursement basis.

Similarly, VA would still pay transportation benefits under section 2308 on a reimbursement basis as provided in current regulations. This is because section 2308 specifies that the payment "shall not exceed the cost of transportation to the national

cemetery nearest the veteran's last place of residence in which burial space is available." Unlike under sections 2302, 2303(b), and 2307, this limitation on the amount requires VA to determine on a case-by-case basis the specific distance traveled and amounts paid. Because section 2308 does not establish a statutory maximum payment and therefore requires an individualized evaluation of costs, proposed § 3.1703(b)(2) would require claimants to provide a receipt when seeking reimbursement for transportation expenses. The proposed rule permits claimants to provide a receipt showing costs incurred, the dates of the services rendered, the name of the deceased veteran who was transported, and the name of the person who paid the transportation charges. This information would be required so VA can ensure accuracy in its adjudication of claims for reimbursement of transportation expenses.

Finally, the proposed paragraph would require that VA "receive" the evidence described, whereas current § 3.1601(b) requires that the claimant "submit" such evidence. The proposed language mirrors the language of section 2304 and recognizes that VA may request additional evidence necessary to complete the application. See 38 U.S.C. 2304.

Proposed paragraph (b)(3) is derived from the second sentence of current § 3.203(c), which states that in a claim for the non-service-connected burial allowance, evidence of service that VA relied upon to award compensation or pension during the veteran's lifetime will be sufficient to prove military service for purposes of the burial allowance, unless VA has evidence on the date it receives notice of the veteran's death that creates doubt as to the correctness of that evidence of service. In proposed § 3.1703(b)(3), we would expand upon the language in § 3.203 to provide that VA may

establish eligibility for any burial benefit based upon the evidence of service and disability that VA relied upon to grant disability compensation or pension during the veteran's lifetime, unless there is other evidence to the contrary.

3.1704 Burial allowance based on service-connected death.

Section 2307 provides that when a veteran dies as a result of a service-connected disability or disabilities, VA will pay the greater of \$2,000 or the amount payable under 5 U.S.C. 8134(a). Payments made under section 2307 are in lieu of payment under sections 2302 (non-service-connected burial allowance) and 2303(b)(2) (plot or interment allowance and for burial of veterans whose death occurred while hospitalized by VA).

VA implemented the "service-connection" requirement and payment limits in current 38 CFR 3.1600(a), which limits payment to the amount specified in section 2307 (\$2,000). In current §§ 3.1601 and 3.1602, VA implemented a reimbursement process that requires claimants to submit evidence of the burial expenses they incurred, after which VA calculates the cost of the veteran's burial and pays on a reimbursement basis up to a statutory maximum. As previously discussed, the reimbursement requirement unnecessarily burdens claimants and hinders VA's ability to provide automated payments to survivors upon notice of death. Accordingly, VA proposes in § 3.1704(a) to pay the service-connected burial allowance at the statutory maximum rate.

Together with the changes proposed in § 3.1702 (prioritizing payment to surviving spouses), proposed § 3.1704 would enable VA to automatically pay certain eligible surviving spouses the \$2,000 service-connected burial allowance upon notice of

the veteran's death. VA's adoption of a flat-rate payment is justified for two reasons. First, under 5 U.S.C. 8134(a), the Government may pay up to \$800 for the funeral and burial expenses of an employee who dies in performance of his or her duty. Thus, the \$2,000 service-connected burial allowance always constitutes the "greater of" the amounts payable under the statutes. Second, while the average cost of a burial in the United States has increased to over \$ 7,045 (2012), the amount payable under section 2307 has not increased since 2001. See Public Law 107-103. Proposed paragraph (a) would prescribe the general rule regarding the service-connected burial allowance and would require that VA pay the maximum allowance specified in section 2307, unless VA has evidence on the date it receives notice of the veteran's death that the costs incurred were less than the statutory maximum. The last sentence of proposed paragraph (a) would clarify that, subject to proposed paragraph (c), payment of the service-connected burial allowance is in lieu of other burial allowances. Because the amount specified by section 2307 is greater than that specified by section 8134(a), the average cost of a burial far exceeds the \$2,000 statutory maximum allowance, and VA already pays the statutory maximum benefit in over 78 percent of claims (as indicated in a 2013 VA review of burial payments made over a five-month period), it is reasonable for VA to presume that the costs incurred met or exceeded the statutory maximum, unless VA has evidence to the contrary on the date it receives notice of the veteran's death.

Proposed paragraph (b) states that veterans who die as a result of a service-connected disability or disabilities would be eligible for the service-connected burial allowance. The paragraph also would establish that eligibility for the service-connected burial allowance exists for veterans with a total service-connected disability

rating on the date of death. Section 2307 requires VA to pay the service-connected burial allowance when a veteran “dies as the result of a service-connected disability or disabilities.” Under 38 U.S.C. 501(a), VA has authority to prescribe rules necessary to carry out the laws administered by VA, including “regulations with respect to the nature and extent of proof and evidence and the method of taking and furnishing them in order to establish the right to benefits under such laws.” Consistent with this authority, VA has made a policy decision to automatically pay the service-connected burial allowance when the veteran died with a service-connected disability or disabilities rated totally disabling at the date of death, excluding a total disability rating based on individual unemployability. This automatic payment is based on a presumption that the veteran died as the result of a service-connected disability or disabilities, unless VA has evidence to the contrary on the date it receives notice of the veteran’s death. In proposed § 3.1704(b), we would clarify that VA pays the service-connected burial allowance in such situations.

VA’s policy decision is supported by the fact that VA already pays the service-connected burial allowance in the majority of cases in which the veteran dies with a total service-connected disability rating. In fiscal year (FY) 2011 and FY 2012, VA paid the service-connected burial allowance in 88 percent of claims in which, on the date of the veteran’s death, the veteran was rated totally disabled for a service-connected disability or disabilities. Because VA already grants the service-connected burial allowance in the vast majority of such cases, we would prescribe a rule in proposed paragraph (b) that when a veteran dies with a total

service-connected disability rating on the date of death, the veteran's eligible survivor is entitled to the service-connected burial allowance. This simplified criterion would facilitate the automatic payments VA contemplates. That automation, and the resultant reduction in VA's administrative workload, would enable VA to divert those resources to processing other claims for VA benefits. VA does not currently, however, have information to enable automated payment of the service-connected burial allowance to surviving spouses of veterans with less than a total service-connected disability rating, including surviving spouses of veterans with a total disability rating based on individual unemployability under 38 CFR 4.16. Such spouses would receive an automated non-service-connected burial allowance payment and could seek additional burial benefits as prescribed in these proposed rules.

Proposed paragraph (c)(1) restates the provisions for payment of transportation expenses for service-connected death in current § 3.1600(g). Proposed paragraph (c)(2) would authorize VA to pay States the plot or interment allowance for burial in a State veterans cemetery under proposed § 3.1707(a), in addition to the service-connected burial allowance. This revision would reflect the amendment made to 38 U.S.C. 2307 by section 501 of the Veterans Benefits Act of 2003 (Public Law 108-183). Prior to the enactment of Public Law 108-183, the statutes in chapter 23 did not authorize a separate plot or interment allowance in cases where VA paid the service-connected burial allowance.

§ 3.1705 Burial allowance based on non-service-connected death.

Section 2302(a) authorizes the Secretary, in the Secretary's discretion, to pay up

to \$300 to cover the burial and funeral expenses of a deceased veteran and the expense of preparing the body and transporting it to the place of burial. Current section 2302 limits eligibility for this burial allowance to two groups of veterans: (1) veterans who were in receipt of VA disability compensation or pension at the time of death or who, but for their receipt of military retirement pay, would have been entitled to receive compensation at the time of death, and (2) veterans who served in a war or were released from active service due to disability incurred or aggravated in line of duty and whose body is held by a State (or political subdivision of the State) and for whom VA determines there is no next of kin and insufficient resources to pay for the veteran's funeral.

Section 104 of Public Law 112-260, effective January 10, 2014, will amend section 2302(a)(2) by removing the wartime service, disability, and held-by-a-State requirements for payment of the non-service-connected burial allowance for the unclaimed remains of indigent veterans. This liberalization would be implemented in proposed § 3.1708 and would not be part of proposed § 3.1705.

VA implemented section 2302(a) in current §§ 3.1600(b) (prescribing eligibility) and 3.1601 (prescribing claim and evidentiary requirements). These regulations provide that VA will pay the non-service-connected burial allowance on a reimbursement basis. VA's experience is that the current reimbursement process is burdensome for both claimants and VA and effectively prohibits VA from automating these small, one-time payments. We have determined that it is no longer practical to administer these benefits on a reimbursement basis when it is clear that the average cost of a burial far exceeds the maximum burial allowance authorized by Congress under section 2302(a).

Accordingly, we propose in § 3.1705(a) to pay the maximum burial allowance prescribed in section 2302 (\$300) when a claimant is eligible for the benefit.

Section 2302 provides VA with discretion, based on the circumstances in each case, to “pay a sum not exceeding \$300 to such person as the Secretary prescribes to cover the burial and funeral expenses of the deceased veteran and the expense of preparing the body and transporting it to the place of burial.” Here, the circumstances of such payments and the information available to us regarding the average cost of a burial support a rule under which VA would pay the statutory maximum benefit. Over a 5-month period in FY 2013, using the current reimbursement scheme, VA paid over 97 percent of approximately 12,400 burial claimants the maximum \$300 payment. The regulatory requirement for survivors to submit statements and receipts supporting entitlement to a small, one-time payment when VA knows that the average cost of a burial is over \$ 7,000 is unreasonable and unjustified from a program management perspective. Further, the nature of the benefit does not justify the time and expense required for VA to calculate a precise reimbursement or the delays that survivors currently experience. VA systems generally contain sufficient information to grant and pay this benefit, such as information identifying an eligible surviving spouse and information confirming basic eligibility, e.g., the deceased veteran’s receipt of pension or compensation at the time of death. As a result, VA estimates that it could automate the adjudication and payment of approximately 62,000 burial claims annually without requiring an application from a surviving spouse under the provisions proposed in this rulemaking. Given that VA has authority to pay up to the maximum benefit, that it pays nearly all claimants the maximum benefit, that the reimbursement requirement delays

the payment of benefits, and that VA could immediately pay thousands of surviving spouses upon notice of a veteran's death, the circumstances support our proposal to pay survivors the maximum benefit under § 3.1705(a).

Proposed paragraph (b) would prescribe eligibility requirements that are consistent with the requirements in current § 3.1600(b)(1) and (2), except as noted below. Current § 3.1600(b)(2) provides eligibility for the non-service-connected burial allowance if the deceased veteran had a "reopened claim" for pension or disability compensation pending at the time of the veteran's death. Rather than refer to a "reopened claim," in proposed paragraph (b)(3)(ii) we would refer to a "claim to reopen." The rationale for awarding the non-service-connected burial allowance based on a pending claim is that a veteran may have met the prerequisite for an award of the non-service-connected burial allowance (i.e., the veteran would have been receiving pension or disability compensation when the veteran died) if the veteran had not died before VA granted the veteran's pending claim for compensation or pension. Thus, it is important that the veteran's claim to reopen was filed, but it matters less whether VA actually reopened the claim. In other words, the proposed language more accurately describes the regulatory requirement that the veteran initiate the claim-adjudication process during his or her lifetime and that the claim is still pending at the time of death. The use of the phrase "claim to reopen" rather than "reopened claim" is not a substantive change; it merely clarifies the intended effect of § 3.1600(b)(2). Finally, to account for the possibility of substitution under 38 U.S.C. 5121A, proposed paragraph (b)(3)(iii) extends eligibility for the non-service-connected burial allowance to a person with a pending claim who has substituted for a deceased veteran and whom VA has

subsequently granted pension or disability compensation. The eligibility requirements in current § 3.1600(b)(2) include a pending original claim for pension or compensation that would have been granted based upon the “evidence of record” on the date of death but for the veteran’s death. We believe it would be helpful to clarify for the public the meaning intended by the phrase “evidence of record.” We propose to use “evidence in the claims file on the date of the veteran's death,” which is more explicit, and define that phrase in proposed paragraph (c). This is consistent with the manner in which VA adjudicates claims for accrued benefits by the survivors of deceased veterans (see 38 CFR 3.1000) and with VA's long-standing practice for adjudicating claims under § 3.1600(b)(2). We also believe it is fair to claimants and places a reasonable burden upon VA adjudicators to be constructively in possession of evidence located in VA medical centers or similar VA facilities.

Proposed paragraph (d) states that if the veteran had either an original claim or a claim to reopen pending at the time of death, but the information in the claims file is not sufficient to award pension or compensation effective before the date of death, VA will request such evidence. If the evidence is not received within 1 year from the date of the request, VA will not award the burial allowance. Current § 3.1600(b)(2) does not reflect VA’s intent because the provision governing additional evidence appears only in paragraph (b)(2)(ii), which addresses only reopened claims, and not in paragraph (b)(2)(i), which addresses original claims. We believe VA’s intent would be clarified if the proposed regulation specifically refers to both a pending original claim and a pending claim to reopen.

Proposed paragraph (e) would identify the additional burial benefits—plot or

interment allowance and transportation reimbursement—potentially available in cases of non-service-connected death and would provide cross-references to the regulations governing those payments. Pursuant to section 2308, transportation reimbursements would be payable only if the veteran was in receipt of compensation rather than pension, or eligible for receipt of compensation but for receipt of military retired pay. Proposed paragraph (e) would reflect this limitation.

3.1706 Burial allowance for a veteran who died while hospitalized by VA.

When a veteran dies while hospitalized by VA, section 2303(a) authorizes VA to pay the actual cost, not to exceed \$700 (increased annually for inflation) toward the cost of the veteran's burial and funeral. Specifically, if the veteran died in a VA facility, as defined under 38 U.S.C. 2303(a)(2), to include an institution at which the veteran was receiving certain types of statutorily authorized care, e.g., a hospital, nursing home, or domiciliary care, in a non-VA facility for contract hospital care or medical services, in a VA-contracted nursing home, or in a State home for hospital, nursing home, or domiciliary care, then VA pays the veteran's burial and funeral costs up to the statutory maximum. Additionally, VA pays the cost of transporting such veteran's remains to the place of burial in any State, as authorized by section 2303(a).

Currently, there are two implementing regulations for this benefit, 38 CFR 3.1600(c) and 38 CFR 3.1605. Having two regulations with different standards for the same benefit causes unnecessary confusion. In addition to addressing the eligibility of veterans who die in VA facilities (to include VA-contracted facilities and VA-paid State nursing homes), § 3.1600(c) covers veterans who die while in transit to or from such

facilities. Current § 3.1605 provides additional and more complex criteria for “[d]eath while traveling under prior authorization or while hospitalized by” VA. Although current § 3.1600(c) covers veterans who die while being transferred for purposes of specific types of care, current § 3.1605(a) provides eligibility if a veteran dies on the way “to or from a specified place” for certain purposes including examination while excluding “hospitalization in the Philippines.” Current § 3.1605(b) denies eligibility for transportation expenses for “retired persons hospitalized under section 5 of Executive Order 10122 . . . issued pursuant to Public Law 351, 81st Congress, and not as Department of Veterans Affairs beneficiaries.” Section 5 of Executive Order 10122 pertains to current and former servicemembers who were hospitalized for chronic diseases between May and October of 1950. Executive Order 10122 is more than half a century old and applied to a very small group of veterans. Therefore, the reference is obsolete.

Current § 3.1605(c) extends entitlement to the burial allowance to the following veterans who die while properly hospitalized by VA: (1) discharged or rejected draftees; (2) members of the National Guard who reported for service in answer to the President's call for World War I, World War II, or Korean service, but when medically examined were not accepted for active military service; or (3) a veteran discharged under conditions other than dishonorable from a period of service other than a war period. With respect to the individuals described in § 3.1605(c)(1) and (2) (draftees and National Guard members not accepted for active service), they are considered veterans and are eligible for burial benefits pursuant to current 38 CFR 3.7(o) if they suffer injury or disease while traveling to or from the place of acceptance for service. Regarding

veterans discharged under conditions other than dishonorable from a period of service other than a war period, they are included in the definition of “veteran” under proposed § 3.1701 and, as such, are eligible for burial benefits.

Under current § 3.1605(d), some veterans who die while temporarily absent from VA facilities are considered eligible for a burial allowance under section 2303(a).

Current § 3.1605(e) states, “[w]here a deceased person was not properly hospitalized, benefits will not be authorized under this section.” Given that section 2303(a) is clear and specific as to the criteria for eligibility, we have determined that the provision in current § 3.1605(e) is unnecessary.

Currently, VA pays the allowance under § 2303(a) on a dollar-for-dollar, cost-reimbursement basis. Under proposed § 3.1706, VA would continue to do so because of statutory language prescribing payment of “actual cost[s].” Accordingly, VA could not automatically pay claimants for section 2303(a) benefits the statutory maximum as a flat rate. Proposed § 3.1706 would also combine in one regulation the broad definition of “hospitalized by VA” in current § 3.1600(c) and the highly technical description of veterans who die while en route to a facility in current § 3.1605. Reimbursement of transportation expenses would be calculated based on proposed § 3.1709.

3.1707 Plot or interment allowances for burial in a State veterans cemetery or other cemetery.

Under two circumstances, section 2303(b) authorizes VA to pay a plot or interment allowance for a veteran who, although eligible for burial in a national cemetery under 38 U.S.C. 2402, is not buried in a national cemetery. If the veteran is buried,

without charge for the cost of the plot or interment in a State-owned cemetery (or section of a State-owned cemetery) used solely for the burial of persons who are eligible for burial in a national cemetery and of deceased Reservists or former Reservists who are not eligible for burial in a national cemetery, VA pays the State (or political subdivision of the State) \$700 (increased for inflation) as a plot or interment allowance. If the veteran is eligible for the non-service-connected burial allowance or the burial allowance for veterans who die while hospitalized by VA (i.e., not eligible for the service-connected burial allowance), or if the veteran was discharged from active service for a service-connected disability and the veteran is buried in a cemetery other than one described in the previous sentence, VA pays a plot or interment allowance of up to \$700 (increased for inflation).

The current implementing regulations for the plot or interment allowance are §§ 3.1600(f), 3.1601(a)(3), and 3.1604(d). Section 3.1600(f) divides claims for the plot or interment allowance into two categories. Paragraph (f)(1) provides the criteria for payment of the plot or interment allowance applicable to claims filed on or after December 16, 2003; the deceased veteran must be eligible for burial in a national cemetery but buried elsewhere. Plot or interment allowance claims filed before December 16, 2003, are covered by the more complex criteria in paragraph (f)(2), which requires that the deceased veteran be eligible for the non-service-connected burial allowance or the burial allowance for death in a VA facility. See 38 CFR 3.1600(f)(2)(i). Respectively, paragraphs (f)(2)(ii) and (f)(2)(iii) allow claims for the plot or interment allowance when the deceased veteran served during a period of war or was discharged for a disability incurred in the line of duty. Paragraph (f)(2)(iv) repeats the statutory

requirement that the deceased veteran is not buried in a national cemetery or other cemetery under the jurisdiction of the United States.

The rules for what constitutes a plot or an interment expense for purposes of section 2303(b) are in current § 3.1601(a)(3), while the rules for VA's payment of plot or interment allowance to a State (or a political subdivision of a State) are in current § 3.1604(d).

In proposed § 3.1707, we would restructure and consolidate the current rules governing the plot or interment allowance and establish a flat-rate payment at the statutory maximum amount. VA currently pays States the enumerated statutory benefit for plot or interment allowance, i.e., a flat-rate payment, as required by section 2303(b)(1). Additionally, paying individual claimants at the statutory maximum rate reflects the reality that the average cost of a burial plot exceeds the benefit amount. Furthermore, paying the maximum rate prescribed in section 2303(b)(2) would facilitate VA's efforts to efficiently pay the benefit.

Proposed § 3.1707(a) would replace current § 3.1604(d) governing VA payment of the plot or interment allowance under section 2303(b)(1) to a State (or a political subdivision of the State) that buried a veteran without charge for the plot or interment. Proposed § 3.1707(b) would clarify that VA pays the plot or interment allowance without regard to whether any other burial benefits were provided for that veteran in the circumstances described in proposed § 3.1707(b)(1)-(3). The proposed rule would not include the caveat in current § 3.1604(d)(1)(v) limiting authorization of payments for veterans "buried on or after October 1, 1978." It is unlikely that VA will receive claims for the plot or interment allowance, especially claims by a State, based upon a burial

that occurred more than 30 years ago. We do not have record of receiving such a claim within the previous 3 years. Accordingly, we do not propose to include the provision.

Proposed § 3.1707(c) would govern payment of the plot or interment allowance for burials in a cemetery that is not a State cemetery. It would be substantively similar to current § 3.1600(f); however, the proposed rule would contain a technical correction removing from a parenthetical reference in current § 3.1600(f)(2)(iii) extraneous language describing evidence showing a discharge from service due to disability. The substantive effect of the rule, as reorganized, would be consistent with other rules in 38 CFR part 3 that contain language similar to current § 3.1600(f)(2)(iii) but without the technical error. See, e.g., 38 CFR 3.3(a)(1)(ii), 3.12a(d)(2). We would consolidate within proposed § 3.1707(c), essentially unchanged, the current definitions of “plot,” “burial plot,” and “plot or interment expenses.”

3.1708 Burial of a veteran whose remains are unclaimed.

Currently, section 2302(a)(2) authorizes VA to pay up to \$300 for a veteran of any war or a veteran who was discharged or released from active service for a service-connected disability, whose remains are unclaimed and held by a State (or political subdivision of the State), and for whom VA determines there are insufficient resources to cover burial and funeral expenses. Effective January 10, 2014, section 104 of Public Law 112-260 will amend section 2302(a)(2) such that VA may pay the non-service-connected burial allowance for any deceased veteran based upon a VA finding that there is no next of kin or other person claiming the remains and that there are insufficient resources to cover the cost of the veteran’s burial and funeral.

Essentially, the Public Law eliminates from section 2303(a)(2) the requirement for either wartime service or for discharge based on disability incurred in line of duty so that the Secretary may pay benefits if the remains of an indigent veteran are unclaimed.

VA implemented current section 2302(a)(2) in § 3.1600(b)(3). Proposed § 3.1708 would implement the liberalizing provisions of Public Law 112-260 by eliminating the wartime service, disability, and held-by-a-State requirements in current § 3.1600(b)(3).

Current § 3.1601(b)(5) requires a written certification by a responsible State official that no one is claiming the veteran's remains and there are not sufficient resources available in the veteran's estate to cover burial and funeral expenses. Under current § 3.1603, a claimant seeking benefits for purposes of burying the unclaimed remains of a deceased veteran must search for friends and relatives of that deceased veteran and provide a statement documenting unsuccessful efforts to locate any friends or relatives to claim that deceased veteran's remains. Proposed § 3.1708 removes the requirement that claimants provide a statement showing the efforts made to locate relatives or friends because VA no longer considers this information necessary and requiring such information is inconsistent with our efforts to improve the efficiency of claim processing.

Finally, effective January 10, 2014, section 104 of Public Law 112-260 will amend section 2308 to extend eligibility for the transportation reimbursement for burial in a national cemetery where VA determines the veteran's remains are unclaimed as described under 38 U.S.C. 2302(a)(2)(A). Proposed paragraph (c) would reflect this expanded benefit eligibility.

3.1709 Transportation expenses for burial in a national cemetery.

Under 38 U.S.C. 2308, VA has authority to reimburse certain transportation expenses of a veteran's remains to a national cemetery when the veteran's death resulted from a service-connected disability or the veteran was in receipt of, or entitled to receive, disability compensation at the time of death. As described above, section 104 of Public Law 112-260 will amend the statute, effective January 10, 2014, to authorize VA to pay (in addition to the existing categories of eligible beneficiaries) for the transportation of unclaimed remains of certain veterans. Paragraphs (b) and (d) of proposed § 3.1709 are derived from and consistent with current § 3.1600(g). Proposed paragraph (b)(4) would implement Public Law 112-260 by permitting VA to reimburse the transportation expenses for unclaimed veterans' remains.

VA reimburses claimants for the cost of transporting a veteran's remains to the place of burial, subject to applicable limits, (1) when a veteran dies while hospitalized by VA (38 U.S.C. 2303(a)), or (2) when a veteran dies as the result of a service-connected disability or was in receipt of or entitled to disability compensation (38 U.S.C. 2308). Proposed paragraph (e) restates current § 3.1606 with only minor technical changes. We do not intend any substantive changes.

Neither section 2303 nor 2308 specifies what specific transportation costs are reimbursable by VA. Current § 3.1606, however, limits reimbursement of transportation costs to specifically enumerated charges. The current rule is confusing for claimants and unnecessarily restricts VA's discretion to reimburse any reasonable transportation costs for which we receive a claim and sufficient supporting evidence as described in

proposed 3.1703(b)(2). Therefore, proposed § 3.1709(d) states simply that VA will reimburse any reasonable transportation expense, including but not limited to the costs of shipment via common carrier and costs of transporting the remains to the place of burial. Proposed paragraph (d)(2) would clarify that a reasonable expense would be the usual and customary charge made to the general public. The proposed rule implements the governing statutes while providing VA the flexibility to reimburse claimants for any reasonable expense for which they submit a claim.

3.1710 Escheat (payment of burial benefits to an estate with no heirs).

Proposed § 3.1710 restates current § 3.1602(d). We do not intend any substantive change by moving the current provisions to proposed § 3.1710.

3.1711 Effect of contributions by government, public, or private organizations.

Sections 2302 and 2303(b) contain specific language that limits veterans' burial benefits if the veterans' burial and funeral expenses have been paid for, in part or in full, by certain governmental and non-governmental organizations. Section 2302(b) states, with respect to the non-service-connected burial allowance, that "no deduction shall be made from the burial allowance" unless the expenses incurred were covered by payment from the United States, a State, any agency or political subdivision of the United States or a State, or the veteran's employer. Section 2303(b)(2) states, with respect to the plot or interment allowance, that VA shall pay a plot or interment allowance unless any part of the veteran's plot or interment expenses were paid for or assumed by a State, or an agency or political subdivision thereof, or by the veteran's

former employer. VA is not required to deduct contributions from other sources. Section 2303(a) (providing burial allowance for death in a VA facility), section 2307 (providing the service-connected burial allowance), and section 2308 (providing for reimbursement of transportation expenses) do not require VA to reduce benefits paid based on contributions from other sources.

VA implemented these provisions in current § 3.1604 regarding payments from non-VA sources. Consistent with VA's current reimbursement-based system, VA reduces burial benefits based on contributions from other sources. Current § 3.1604(a) prescribes a reduction of benefits based upon contributions from Federal or State governments, employers, and "other public or private organization[s] such as a lodge, union, fraternal or beneficial organization, society, burial association or insurance company." Additionally, § 3.1604 applies to all burial benefits, including service-connected burial allowance and transportation reimbursement.

Proposed § 3.1711 would liberalize VA's policy regarding contributions from other sources to ensure the broadest possible delivery of benefits. The proposed rule would eliminate the requirement for VA to consider contributions from other sources when awarding the non-service-connected burial allowance. Such consideration is unnecessary for two reasons. First, as stated previously, the average cost of a funeral and burial (estimated at over \$7,000) far exceeds the amount of the benefit (\$300). Data shows that almost 98 percent of claimants for the non-service-connected burial allowance already receive payment at the statutory maximum rate even when contributions from other sources are considered. It is unnecessary for VA to consider contributions from other sources when we already pay the maximum rate in virtually

every case and where contributions from government and employer sources rarely if ever cover the complete costs of funeral and burial such that a claimant would not be eligible for the non-service-connected burial allowance. Second, withholding payment of the burial allowance until VA obtains evidence of contributions would frustrate VA's efforts to automate this benefit. Where permissible, VA plans to automatically pay a burial allowance to the surviving spouse of record based on evidence in its systems immediately upon notice of the veteran's death based on a presumption that contributions from other sources will not cover the complete costs of funeral and burial, unless VA has evidence on the date that it receives notice of the veteran's death that the expenses incurred were less. VA cannot perform this automation if it must also wait for any potential contributions, which may or may not happen, to consider the impact of such contributions on the award of benefits. Because the benefit amount is so small and the cost of funeral and burial so great, and in order to foster VA's efforts to automate, we would establish a rule that those who are eligible for the non-service-connected burial allowance are eligible for the full, statutory maximum burial allowance without regard to any potential contributions from government or employer sources.

Current § 3.1604(a)(1) and (2) describe instances in which contributions by another source would not bar payment of burial benefits, including where contribution results from "[a] contract or policy which provides for payment at death." The proposed rule would not include this treatment. The proposed rule would specify that VA will only consider contributions from a government or employer source. Because the proposed rule would be clear, we do not need to discuss the contributions that do not bar payment of burial benefits.

Proposed paragraph (a) would describe how VA will account for contributions toward a veteran's plot or interment expenses. If VA receives a claim for plot or interment allowance and has evidence that a government or employer source contributed toward the veteran's plot or interment expenses, VA will pay the statutory maximum plot or interment allowance (\$700) minus the amount of any contribution to that expense paid by all such sources.

Proposed paragraph (b)(1) is derived from current § 3.1604(b)(1) and (2). The proposed paragraph differs from the current rule in several respects. Current § 3.1604(b)(1) proscribes VA's payment of burial benefits where the veteran is entitled to similar benefits under the United States Employees' Compensation Act or other similar laws. By specifically referencing the Employees' Compensation Act, the rule may be misread to apply only when the deceased veteran was a Federal employee. However, section 2302(b) requires VA to withhold the non-service-connected burial allowance "in any case where specific provision is otherwise made for payment of expenses of funeral, transportation, and interment under any other Act." We propose to use language that is similar to the statutory language to ensure that the law is given its full, intended effect.

In addition, current § 3.1604(b)(1) states that, where a law specifically provides for "payment of the expenses of funeral, transportation, and interment out of Federal funds, burial allowance will not be authorized." The proposed rule would clarify that this bar is applicable only to the non-service-connected burial allowance. Although section 2302(b) bars payment of the non-service-connected burial allowance under those circumstances, section 2307 contains no such bar for the service-connected

burial allowance. Likewise, section 2303 contains no such bar for the burial allowance paid for veterans who die in a VA facility or for the plot or interment allowance.

Proposed paragraph (b)(1) also specifies that VA will pay the non-service-connected burial allowance if another Federal law permits, but does not specifically require, payment of the veteran's funeral and burial expenses using funds due, or accrued to the credit of, the deceased veteran. As discussed previously, VA proposes to establish a rule that any contribution that may or may not be made by another Federal source will not cover the full cost of the veteran's funeral and burial and will not negate entitlement to the non-service-connected burial allowance at the maximum rate.

Proposed paragraph (b)(2) is derived from current § 3.1604(b)(3) and would provide that VA will not pay or will recoup the non-service-connected burial allowance for deaths occurring during active or for other deaths for which the service department pays the burial, funeral, or transportation expenses. This paragraph is necessary because 38 U.S.C. 2302(b) requires deduction from the non-service-connected burial allowance when the expenses incurred are "covered by the amount actually paid therefor by the United States." Particularly relevant to this analysis, 10 U.S.C. 1482(b) authorizes the service departments to pay funeral expenses for servicemembers who die in a duty status covered in 10 U.S.C. 1481. Thus, if VA learns that a service department has already paid a survivor burial expenses, then VA may deny the claim or recoup an automatic payment for non-service-connected burial allowance.

Proposed paragraph (b)(3) would provide that in those limited cases where a veteran dies while hospitalized at the expense of the U.S. government and benefits would be

payable under 10 U.S.C. 1482(b) and a provision under subpart B, only one of these benefits is payable. This rule is consistent with VA's current policy.

3.1712 Effect of forfeiture on payment of burial benefits

Proposed § 3.1712(a) would restate, in plain language, current § 3.1609(a). There are only two substantive changes in proposed paragraph (b). The first is to remove the provision of current § 3.1609(b) regarding a Presidential pardon regarding a treasonous or subversive act during the veteran's lifetime. There is no such provision in 38 U.S.C. 6103 or 6104.

The second substantive change is to specify that "burial benefits" will not be paid if the veteran or claimant forfeited rights to such benefits based on treasonous or subversive activities. This would include transportation reimbursement, whereas the current § 3.1609(b) limits payments of only the "[b]urial and plot or interment allowance." Section 6104(a) bars receipt of all benefits if a veteran is guilty of treasonous acts, and section 6104(c) removes the Secretary's discretion to pay the veteran's dependents any portion of benefits forfeited after September 1, 1959. Similarly, section 6105 bars receipt of any benefit for both veterans and their dependents for veterans convicted of subversive activities. The proposed rule clarifies that no burial benefit shall be awarded based on veterans convicted of crimes described in section 6104 or 6105.

3.1713 Eligibility based on status before 1958

We propose to remove current 38 CFR 3.954, Burial allowance, and address its provisions in proposed 3.1713. Under 38 U.S.C. 2305, those who are entitled to burial

benefits as of December 31, 1957, but who do not meet the service requirements contained in chapter 23, are nevertheless entitled to burial benefits. Current § 3.954 states that veterans entitled to burial benefits under any law in effect on December 31, 1957, are entitled to a burial allowance even if the veteran does not meet the service requirements of chapter 23. The distinction in the current rule between entitlement to burial benefits and entitlement to a burial allowance is inconsistent with section 2305 and difficult to administer.

The proposed rule would restate current § 3.954 but would correct its technical error. The proposed rule, in line with section 2305, would state that veterans whose eligibility for burial benefits was established under laws in effect as of December 31, 1957, would be eligible for burial benefits even if the veteran does not meet the service requirements of the current rules.

Paperwork Reduction Act

The Office of Management and Budget (OMB) assigns a control number for each collection of information it approves. Except for emergency approvals under 44 U.S.C. 3507(j), VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The proposed rule at 38 CFR 3.1703, as it concerns applications for burial, constitutes a collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521). The information collection requirement for § 3.1703 is currently approved by OMB and has been assigned OMB control numbers 2900-0003. However, VA has determined that provisions in the proposed rule, including

automated burial payments and reduced evidentiary requirements, will reduce the information collection burden. Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collection of information.

Burial claims are submitted on VA Form 21-530, Application for Burial Benefits. Such forms may include a claim for up to three distinct burial benefits: burial allowance, plot and interment allowance, and transportation reimbursement. Those eligible for a service-connected burial allowance are not entitled to a plot or interment allowance, but nearly all claimants who are eligible for a burial allowance may be eligible for reimbursement of approved transportation costs. Claimants can apply for all three burial benefits using the same form, or may submit separate forms for each portion of their burial claim. Because those in receipt of automated burial allowance payments would still be entitled to other benefits which require filing a claim, the proposed rules would not necessarily reduce the total number of claims for burial benefits VA receives. The rules would, however, greatly reduce the evidence required to support a claim and thereby reduce the amount of time VA needs to process the claim. Consistent with the proposed amendments, VA intends to revise the instructions to VA Form 21-530 to remove references to receipts or statements of account when such documentation would no longer be required.

We are requesting comments on the collection of information provisions contained in § 3.1703. Comments must be submitted by [Insert date 60 days after date of publication in the Federal Register].

Comments on the collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, or faxed to (202) 395-6974, with copies mailed or hand delivered to: Director, Office of Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1068, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AO82."

Summary of collection of information: The proposed rule at § 3.1703 contains collections of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521) concerning applications for VA burial benefits.

Description of the need for information and proposed use of information: This information is needed to determine eligibility for VA monetary burial benefits.

Estimated number of respondents per year: 150,000.

Estimated frequency of responses per year: On occasion.

Estimated total annual reporting and recordkeeping burden: 37,500 hours.

The Department considers comments by the public on collections of information in--

- Evaluating whether the collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;

- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.
- OMB is required to make a decision concerning the collections of information contained in this rule between 30 and 60 days after publication of this document in the Federal Register. Therefore, a comment to the Office of Management and Budget is best assured of having its full effect if the Office of Management and Budget receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). Although this proposed rule would affect some small entities, specifically funeral homes, it would not have a significant economic impact on those entities. Under current regulations, the funeral home engaged by a deceased veterans' survivor to handle the veteran's burial, may seek direct reimbursement from VA for certain expenses in lieu of collecting payment from the survivor. To facilitate automation of VA's burial benefit payments, this proposed rule would discontinue direct payment of a survivor's burial benefits to a

funeral home. While this change might create some additional administrative burden for funeral homes, it would not have a significant economic impact under the Regulatory Flexibility Act. Funeral homes would collect the full amount of their bill for services rendered in burying a veteran from the veteran's survivors. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action" requiring review by OMB unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations

of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined to be a significant regulatory action under the Executive Order because it is likely to result in a rule that may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www1.va.gov/orpm/>, by following the link for "VA Regulations Published."

Comment Period

Although Executive Order 12866 generally requires that agencies afford the public a 60-day comment period, VA has determined that there is good cause to limit the public comment period for this proposed rule to 30 days. This rulemaking is necessary to implement VA's decision to liberalize burial benefits in order to facilitate automation of payments to surviving spouses and other claimants. It is also necessary to implement the statutory changes included in Public Law 112-260 to increase the availability of benefits for veterans whose remains are unclaimed. Accordingly, we provided a 30-day comment period for the public to comment on the proposed provisions.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this proposed rule are 64.100, Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces; 64.101, Burial Expenses Allowance for Veterans; 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.106, Specially Adapted Housing for Disabled Veterans; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; 64.115, Veterans Information and Assistance; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal

Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, Department of Veterans Affairs, approved this document on July 29, 2013, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Pensions,
Veterans.

Dated: December 3, 2013.

Robert C. McFetridge,
Director, Regulation Policy and Management,
Office of the General Counsel,
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 3 as follows:

PART 3 – ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.954 [Removed]

2. Remove § 3.954.

3. Revise subpart B to read as follows:

Subpart B—Burial Benefits

BURIAL BENEFITS: GENERAL

3.1700 Types of VA burial benefits.

3.1701 Deceased veterans for whom VA may provide burial benefits.

3.1702 Persons who may receive burial benefits; priority of payments.

3.1703 Claims for burial benefits.

BURIAL BENEFITS: ALLOWANCES & EXPENSES PAID BY VA

3.1704 Burial allowance based on service-connected death.

- 3.1705 Burial allowance based on non-service-connected death.
- 3.1706 Burial allowance for a veteran who died while hospitalized by VA.
- 3.1707 Plot or interment allowances for burial in a State veterans cemetery or other cemetery.
- 3.1708 Burial of a veteran whose remains are unclaimed.
- 3.1709 Transportation expenses for burial in a national cemetery.

BURIAL BENEFITS: OTHER

- 3.1710 Escheat (payment of burial benefits to an estate with no heirs).
- 3.1711 Effect of contributions by government, public, or private organizations.
- 3.1712 Effect of forfeiture on payment of burial benefits.
- 3.1713 Eligibility based on status before 1958.

AUTHORITY: 105 Stat, 386, 38 U.S.C. 501(a), 2302-2308, unless otherwise noted.

Subpart B—Burial Benefits

BURIAL BENEFITS: GENERAL

§ 3.1700 Types of VA burial benefits.

(a) Burial benefits. VA provides the following types of burial benefits, which are discussed in §§ 3.1700 through 3.1712:

- (1) Burial allowance based on service-connected death;
- (2) Burial allowance based on non-service-connected death;
- (3) Burial allowance for a veteran who died while hospitalized by VA;
- (4) Burial plot or interment allowance; and

(5) Reimbursement for transportation of remains.

(b) Definition. For purposes of this subpart, burial means all the legal methods of disposing of the remains of a deceased person, including, but not limited to, cremation, burial at sea, and medical school donation.

(c) Cross references. (1) Other benefits and services related to the memorialization or interment of a deceased veteran and certain survivors include the following:

(i) Burial in a national cemetery (see §§ 38.600 and 38.617 through 38.629 of this chapter);

(ii) Presidential memorial certificates (see 38 U.S.C. 112);

(iii) Burial flags (see § 1.10 of this chapter); and

(iv) Headstones or markers (see §§ 38.630 through 38.633 of this chapter).

(2) The provisions of §§ 3.1702 through 3.1711 do not apply to any of the programs listed in paragraph (c)(1) of this section.

§ 3.1701 Deceased veterans for whom VA may provide burial benefits.

For purposes of providing burial benefits under subpart B of this part, the term “veteran” means the same as provided in 38 U.S.C. 101(2). A veteran must be deceased, and burial benefits for that veteran must be authorized by a specific provision of law. For purposes of the non-service-connected burial allowance under 38 U.S.C. 2302, the term “veteran” includes a person who died during a period deemed to be active military, naval, or air service under § 3.6(b)(7).

(Authority: 38 U.S.C. 101(2), 2302, 2303, 2307, 2308)

§ 3.1702 Persons who may receive burial benefits; priority of payments.

(a) Automatic payments to eligible surviving spouse. VA will automatically pay a burial benefit to an eligible surviving spouse when VA is able to determine eligibility based on evidence of record as of the date of the veteran's death. VA may grant additional burial benefits, including the plot or interment allowance and reimbursement for transportation, to the surviving spouse or any other eligible person in accordance with paragraph (b) of this section and based on a claim described in § 3.1703.

(b) Priority of payments. (1) Except for claims a State, or an agency or political subdivision of a State, files under § 3.1707, Plot or interment allowance for burial in a State veterans cemetery or other cemetery, or § 3.1708, Burial of a veteran whose remains are unclaimed, VA will pay, upon the death of a veteran, the living person first listed as follows:

- (i) His or her surviving spouse;
- (ii) His or her children (first to file);
- (iii) His or her parents (first to file) or the surviving parent.

(2) In all other cases, VA will pay the executor or administrator of the estate of the deceased veteran. If no executor or administrator has been appointed, VA may pay burial benefits based on a claim filed by a person acting for such estate who will distribute the burial benefits to the person or persons entitled to such distribution under the laws of the veteran's last State of residence.

(3) In the case of a Veteran whose remains are unclaimed, VA will pay the person or entity that provided burial services.

(4) VA will pay burial benefits to a single representative of the categories in paragraph (b)(1) of this section. VA will not divide applicable burial benefits among claimants; it is the responsibility of the recipient to distribute benefits as may be required.

(Authority: 38 U.S.C. 2302, 2303, 2307)

CROSS REFERENCE: § 3.1(i) for the definition of “State”.

§ 3.1703 Claims for burial benefits.

(a) When claims must be filed—(1) General rule. Except as provided in paragraph (a)(2) of this section, VA must receive a claim for the non-service-connected burial allowance no later than 2 years after the burial of the veteran. There are no other time limitations to file claims for burial benefits under subpart B of this part.

(2) Correction of character of discharge. If the non-service-connected burial allowance was not payable at the time of the veteran’s death or burial because of the character of the veteran’s discharge from service, VA may pay the allowance if a competent authority corrects the deceased veteran’s discharge to reflect a discharge under conditions other than dishonorable. Claims for the non-service-connected burial allowance must be filed no later than 2 years after the date that the discharge was corrected.

(b) Supporting evidence—(1) General rule. In order to pay burial benefits, VA must receive all of the following:

- (i) A claim, except as provided in § 3.1702(a);
- (ii) Proof of the veteran’s death in accordance with § 3.211, Death; and

(iii) For persons listed under § 3.1702(b), except as provided in § 3.1702(a), a statement certifying that the claimant incurred burial, plot or interment, or transportation costs of the deceased veteran.

(2) Reimbursement of transportation expenses. In order to pay transportation costs, VA must receive a receipt, preferably on letterhead, showing who paid the costs, the name of the deceased veteran, the specific transportation expenses incurred, and the dates of the services rendered.

(3) Eligibility based on evidence of record. VA may establish eligibility for benefits in this subpart based upon evidence of service and disability that VA relied upon to grant disability compensation or pension during the veteran's lifetime, unless VA has some other evidence on the date that it receives notice of the veteran's death that creates doubt as to the correctness of that evidence.

(Authority: 38 U.S.C. 2304, 5107(a))

BURIAL BENEFITS: ALLOWANCES & EXPENSES PAID BY VA

§ 3.1704 Burial allowance based on service-connected death.

(a) General rule. VA will pay the maximum burial allowance specified in 38 U.S.C. 2307 for the burial and funeral expenses of a veteran described in paragraph (b) of this section, unless VA has evidence on the date it receives notice of the veteran's death that the expenses incurred were less than that amount. Payment of the service-connected burial allowance is in lieu of other allowances authorized by subpart B of this part, except those allowances listed in paragraph (c) of this section.

(b) Eligibility. A burial allowance is payable under this section for a veteran who died as a result of a service-connected disability or disabilities. VA will presume, unless it has evidence to the contrary on the date it receives notice of the veteran's death, that a veteran died as a result of a service-connected disability or disabilities if, at the date of death, the veteran was rated totally disabled for a service-connected disability or disabilities, excluding a total disability rating based on individual unemployability.

(c) Additional allowances available based on service-connected death. In addition to the service-connected burial allowance authorized by this section:

(1) VA may reimburse for transportation expenses related to burial in a national cemetery under § 3.1709, Transportation expenses for burial in a national cemetery; and

(2) VA may pay the plot or interment allowance for burial in a State veterans cemetery under § 3.1707(a), Plot or interment allowance.

(Authority: 38 U.S.C. 2303, 2307, 2308)

CROSS REFERENCE: § 3.1(i), for the definition of "State".

§ 3.1705 Burial allowance based on non-service-connected death.

(a) General rule. VA will pay the maximum burial allowance specified in 38 U.S.C. 2302 for the burial and funeral expenses of a veteran described in paragraph (b) of this section, unless VA has evidence on the date it receives notice of the veteran's death that the expenses incurred were less than that amount. Payment of the non-service-connected burial allowance is subject to other applicable regulations in subpart B of this part.

(b) Eligibility. A burial allowance is payable under this section for a veteran who, on the date of death:

- (1) Was receiving VA pension or disability compensation;
- (2) Would have been receiving disability compensation but for the receipt of military retired pay; or
- (3) Had pending any of the following claims:
 - (i) An original claim for pension or disability compensation, and the evidence in the claims file on the date of death and any evidence received under paragraph (d) of this section is sufficient to grant pension or disability compensation effective before the date of death; or
 - (ii) A claim to reopen a previously denied pension or disability compensation claim, based on new and material evidence, and the evidence in the claims file on the date of the veteran's death and any evidence received under paragraph (d) of this section is sufficient to reopen the claim and grant pension or disability compensation effective before the date of death; or
 - (iii) A claim for which a person would be eligible to substitute for the deceased veteran under 38 U.S.C. 5121A, Substitution in case of death of claimant, and that claim, once processed to completion by the substitute, results in the grant of pension or disability compensation effective before the date of death.

(c) Evidence in the claims file on the date of the veteran's death means evidence in VA's possession on or before the date of the deceased veteran's death, even if such evidence was not part of the VA claims file on or before the date of death.

(d) Requesting additional evidence. If the veteran had either an original claim or a claim to reopen pending on the date of death and there is sufficient evidence in VA's possession to support an award of compensation or pension prior to the date of death, but VA determines that additional evidence is needed to confirm that the deceased would have been entitled prior to death, VA will request such evidence. If VA does not receive such evidence within 1 year after the date of the request, it will deny the claim.

(e) Additional allowances available based on non-service-connected death. In addition to the non-service-connected burial allowance authorized by this section:

(1) VA may reimburse for transportation expenses related to burial in a national cemetery under § 3.1709, Transportation expenses for burial in a national cemetery, but only if eligibility under paragraphs (b) of this section is based on a pending claim for, or award of, disability compensation, or eligibility for disability compensation but for receipt of military retired pay, rather than a claim for, or award of, pension; and

(2) VA may pay the plot or interment allowance for burial in a State veterans cemetery under § 3.1707(a), Plot or interment allowance.

(Authority: 38 U.S.C. 2302, 2303, 2304, 2308)

CROSS REFERENCE: § 3.1(i), for the definition of "State".

§ 3.1706 Burial allowance for a veteran who died while hospitalized by VA.

(a) General rule. VA will pay up to the maximum burial allowance specified in 38 U.S.C. 2303(a) for the burial and funeral expenses of a veteran described in paragraph (b) of this section.

(b) Eligibility. A burial allowance is payable under this section for a veteran whose death was not service-connected and who died while hospitalized by VA. For purposes of this allowance, a veteran was hospitalized by VA if the veteran:

(1) Was properly admitted to a VA facility (as described in 38 U.S.C. 1701(3)) for hospital, nursing home, or domiciliary care under the authority of 38 U.S.C. 1710 or 1711(a);

(2) Was transferred or admitted to a non-VA facility (as described in 38 U.S.C. 1701(4)) for hospital care under the authority of 38 U.S.C. 1703;

(3) Was transferred or admitted to a nursing home for nursing home care at the expense of the U.S. under the authority of 38 U.S.C. 1720;

(4) Was transferred or admitted to a State nursing home for nursing home care for which payment is authorized under the authority of 38 U.S.C. 1741;

(5) Was traveling under proper prior authorization, and at VA expense, to or from a specified place for purpose of examination, treatment, or care; or

(6) Was hospitalized by VA pursuant to any of paragraphs (b)(1) through (4) of this section but was not at the facility at the time of death and was:

(i) On authorized absence that did not exceed 96 hours at the time of death;

(ii) On unauthorized absence for a period not in excess of 24 hours at the time of death; or

(iii) Absent from the facility for a period not in excess of 24 hours of combined authorized and unauthorized absence at the time of death.

(c) Hospitalization in the Philippines. Hospitalization in the Philippines under 38 U.S.C. 1731, 1732, and 1733 does not meet the requirements of this section.

(d) Additional allowances available based on death while hospitalized by VA. In addition to the burial allowance authorized by this section:

(1) VA will reimburse for the expense of transporting the remains of a person described in paragraph (b) of this section to the place of burial subject to the limitations of § 3.1709 and where the death occurs within a State and:

(i) The place of burial is in the same State or any other State; or

(ii) The place of burial is in Canada or Mexico. However, reimbursement for transportation of the remains for such burial is authorized only from the place of death within a State to the port of embarkation within a State, or to the border limits of the United States.

(2) VA may pay the plot or interment allowance for burial in a veterans cemetery under § 3.1707, Plot or interment allowance.

(Authority: 38 U.S.C. 2303(a), 2308)

CROSS REFERENCE: § 3.1(z) for the definition of “nursing home” and § 3.1(i) for the definition of “State”.

§ 3.1707 Plot or interment allowances for burial in a State veterans cemetery or other cemetery.

(a) General eligibility. For a veteran who was eligible for burial in a national cemetery under 38 U.S.C. 2402, but was not buried in a national cemetery or other cemetery under the jurisdiction of the U.S., VA will pay the allowances described below, provided all criteria are met.

(b) Plot or interment allowance for burial in a State veterans cemetery. VA will pay the plot or interment allowance in the amount specified in 38 U.S.C. 2303(b)(1) (without regard to whether any other burial benefits were provided for that veteran) to a State, or an agency or political subdivision of a State, that provided a burial plot or interment for the veteran without charge if the State, or agency or political subdivision of the State:

(1) Is claiming the plot or interment allowance for burial of the veteran in a cemetery, or section of a cemetery, owned by the State or agency or subdivision of the State;

(2) Did not charge for the expense of the plot or interment; and

(3) Uses the cemetery or section of a cemetery solely for the interment of:

(i) Persons eligible for burial in a national cemetery; and

(ii) In a claim based on a veteran's death after October 31, 2000, either:

(A) Deceased members of a reserve component of the Armed Forces not otherwise eligible for interment in a national cemetery; or

(B) Deceased former members of a reserve component of the Armed Forces not otherwise eligible for interment in a national cemetery who were discharged or released from service under conditions other than dishonorable.

(c) Plot or interment allowance payable based on burial in other than a State veterans cemetery. Unless VA has evidence on the date it receives notice of the veteran's death that the expenses incurred were less, VA will pay the maximum plot or interment allowance specified in 38 U.S.C. 2303(b)(2) to a claimant who incurred plot or interment expenses relating to the purchase of a burial plot for a deceased veteran if the

veteran is buried in a cemetery other than a cemetery described in paragraphs (b)(1) and (b)(3) of this section and:

(1) The veteran is eligible for a burial allowance under § 3.1705, Burial allowance based on non-service-connected death;

(2) The veteran is eligible for a burial allowance under § 3.1706, Burial allowance for a veteran who died while hospitalized by VA;

(3) The veteran was discharged from active service for a disability incurred or aggravated in line of duty (VA will accept the official service record of such discharge as proof of eligibility for the plot or interment allowance and VA will disregard any previous VA determination made in connection with a claim for monetary benefits that the disability was not incurred or aggravated in line of duty); or

(4) The veteran, at the time of discharge from active service, had a disability, shown by official service records, which in medical judgment would have justified a discharge for disability.

(d) Definitions. For purposes of subpart B of this part, plot or burial plot means the final disposal site of the remains, whether it is a grave, mausoleum vault, columbarium niche, or other similar place. Plot or interment expenses are those expenses associated with the final disposition of the remains and are not confined to the acts done within the burial grounds but may include the removal of remains for burial or interment.

(Authority: 38 U.S.C. 501(a), 2303(b))

CROSS REFERENCE: § 3.1(i), for the definition of “State”.

§ 3.1708 Burial of a veteran whose remains are unclaimed.

(a) General. VA will pay the maximum burial allowance specified in 38 U.S.C. 2302 for the burial and funeral expenses of a veteran described in paragraph (b) of this section, unless VA has evidence on the date it receives notice of the veteran's death that the expenses incurred were less than that amount.

(b) Eligibility. A burial allowance is payable under this section for a veteran if the Secretary determines that:

(1) There is no next of kin or other person claiming the remains of the deceased veteran; and

(2) There are not sufficient resources available in the veteran's estate to cover the burial and funeral expenses.

(c) Additional allowance for transportation of unclaimed remains. VA may reimburse for transportation expenses related to burial in a national cemetery under § 3.1709, Transportation expenses for burial in a national cemetery, for a veteran described in paragraph (b) of this section.

(d) Burial. When VA determines that a veteran's remains are unclaimed, the Director of the VA regional office in the area in which the veteran died will immediately complete arrangements for burial in a national cemetery or, at his or her option, in a cemetery or cemetery section meeting the requirements of paragraph (a) of § 3.1707, Plot or interment allowance.

(Authority: 38 U.S.C. 2302(a))

CROSS REFERENCE: § 3.1(i) for the definition of "State".

§ 3.1709 Transportation expenses for burial in a national cemetery.

(a) General. VA will reimburse the costs of transportation, subject to paragraph (d) of this section, of a veteran's remains for burial in a national cemetery for a veteran described in paragraph (b) of this section.

(b) Eligibility. VA will reimburse for the expense incurred, subject to paragraph (d) of this section, to transport a veteran's remains for burial in a national cemetery if:

(1) The veteran died as the result of a service-connected disability;

(2) The veteran was receiving service-connected disability compensation on the date of death;

(3) The veteran would have been receiving service-connected disability compensation on the date of death, but for the receipt of military retired pay or non-service-connected disability pension; or

(4) The Secretary determines the veteran is eligible for a burial allowance under § 3.1708.

(c) Amount payable. The amount payable under this section will not exceed the cost of transporting the remains to the national cemetery closest to the veteran's last place of residence in which burial space is available, and is subject to the limitations set forth in paragraph (e) of this section.

(d) Reimbursable transportation expenses. (1) VA will reimburse reasonable transportation expenses, including but not limited to the costs of shipment via common carrier (i.e., procuring permits for shipment, a shipping case, sealing of the shipping case, and applicable Federal taxes) and costs of transporting the remains to the place of burial.

(2) A reasonable transportation expense is an expense that is usual and customary in the context of burial transportation, with a corresponding charge that is the usual and customary charge made to the general public for the same or similar services.

(Authority: 38 U.S.C. 2303, 2308)

BURIAL BENEFITS: OTHER

§ 3.1710 Escheat (payment of burial benefits to an estate with no heirs).

VA will not pay burial benefits if the payment would escheat (that is, would be turned over to the State because there are no heirs to the estate of the person to whom such benefits would be paid).

(Authority: 38 U.S.C. 501(a))

§ 3.1711 Effect of contributions by government, public, or private organizations.

(a) Contributions by government or employer. With respect to claims for a plot or interment allowance under § 3.1707, if VA has evidence that the U.S., a State, any agency or political subdivision of the U.S. or of a State, or the employer of the deceased veteran has paid or contributed payment to the veteran's plot or interment expenses, VA will pay the claimant up to the lesser of:

- (1) The allowable statutory amount; or
- (2) The amount of the total plot or interment expenses minus the amount of expenses paid by any or all of the organizations described in this paragraph (a).

(b) Burial expenses paid by other agencies of the U.S. (1) Burial allowance when Federal law or regulation also provides for payment. VA cannot pay the non-service-connected burial allowance when any Federal law or regulation also specifically provides for the payment of the deceased veteran's burial, funeral, or transportation expenses. However, VA will pay the non-service-connected burial allowance when a Federal law or regulation allows the payment of burial expenses using funds due, or accrued to the credit of, the deceased veteran (such as Social Security benefits), but the law or regulation does not specifically require such payment. In such cases, VA will pay the maximum amount specified in 38 U.S.C. 2302.

(2) Payment by military service department. VA will not pay or will recoup the non-service-connected burial allowance for deaths occurring during active service or for other deaths for which the service department pays the burial, funeral, or transportation expenses.

(3) When a veteran dies while hospitalized. When a veteran dies while hospitalized at the expense of the U.S. government (including, but not limited to, death in a VA facility) and benefits would be otherwise be payable under 10 U.S.C. 1482 and a provision of this subpart B, only one of these benefits is payable. VA will attempt to locate a relative of the veteran, in the priority order described in § 3.1702(b), or person entitled to reimbursement and will ask that person to elect between these benefits.

(Authority: 38 U.S.C. 2302, 2303(b))

§ 3.1712 Effect of forfeiture on payment of burial benefits.

(a) Forfeiture for fraud. VA will pay burial benefits, if otherwise in order, based on a deceased veteran who forfeited his or her right to receive benefits due to fraud under § 3.901, Fraud. However, VA will not pay burial benefits to a claimant who participated in fraudulent activity that resulted in forfeiture under § 3.901.

(b) Forfeiture for treasonable acts or for subversive activity. VA will not pay burial benefits based on a period of service commencing before the date of commission of the offense if either the veteran or the claimant has forfeited the right to all benefits except insurance payments under § 3.902, Forfeiture for treasonable acts, or § 3.903, Forfeiture for subversive activities, because of a treasonable act or subversive activities, unless the offense was pardoned by the President of the U.S.

(Authority: 38 U.S.C. 6103, 6104, 6105)

CROSS REFERENCE: § 3.1(aa), for the definition of “fraud.”

§ 3.1713 Eligibility based on status before 1958.

When any person dies who had a status under any law in effect on December 31, 1957, that afforded entitlement to burial benefits, burial benefits will be paid, if otherwise in order, even though such status does not meet the service requirements of 38 U.S.C. chapter 23.

(Authority: 38 U.S.C. 2305)

[FR Doc. 2013-29142 Filed 12/17/2013 at 8:45 am; Publication Date: 12/18/2013]